

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 15, 2011

In the Matter of P. REID, Minor.

No. 299812
Cheboygan Circuit Court
Family Division
LC No. 09-008015-NA

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her son pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody), (h) (incarceration of parent for more than two years), and (j) (risk of harm to child if returned to custody of parent). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner sought termination of respondent's parental rights after respondent's vehicle, in which respondent and the child were passengers, was stopped and found to contain materials for the manufacture of methamphetamine. Petitioner based the petition on this incident, and also alleged that respondent used illegal substances in the child's presence, had allowed the child to continue to be in the presence of a man who sexually abused him, and had neglected the child by allowing him to miss school frequently.

Respondent pleaded guilty to operating/maintaining a methamphetamine laboratory in the presence of a minor, MCL 333.7401c(2)(b), and second-degree child abuse, MCL 750.136b(3), and was sentenced to concurrent prison terms of three years, four months to 20 years for operating/maintaining a methamphetamine laboratory and two to four years for second-degree child abuse.¹

Following a hearing, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), (h), and (j). The trial court found that the undisputed evidence showed

¹ The Michigan Offender Tracking Information System indicates that respondent's earliest possible release date is July 13, 2013, and that her maximum discharge date is March 12, 2030.

that respondent pleaded guilty to crimes of which the child was the victim and which would keep respondent incarcerated for a minimum of three years. Respondent had made no arrangements for the child's care during the time she would be incarcerated. The trial court also found that the evidence showed that prior to respondent's incarceration, she failed to provide proper care and custody for the child. Respondent engaged in substance abuse and had relationships with persons who had criminal records, and exposed the child to this behavior. The trial court also found that termination of respondent's parental rights was in the child's best interests. The trial court found that respondent had attempted to be a good parent, but that the child deserved stability and now looked to his foster parents for guidance, and that respondent would not be released from prison for at least three years.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when we are left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours*, 459 Mich at 633. If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court shall terminate parental rights if it finds from evidence on the whole record that termination is in the child's best interests. MCL 712A.19b(5).

Respondent's parental rights were terminated under MCL 712A.19b(3)(g), (h), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

MCL 712A.19b(5) deals with the best interests determination, and provides:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

We hold that the trial court did not clearly err in finding that petitioner established by clear and convincing evidence the existence of these statutory grounds for termination of respondent's parental rights.

The uncontradicted evidence established that before the child went into care, he and respondent moved frequently, and he did not attend school on a regular basis. Respondent allowed the child to be in the presence of convicted criminals, including registered sex offenders. Respondent used illegal substances, including methamphetamine, in the child's presence, and was convicted of two offenses of which the child was the victim.

Furthermore, it was undisputed that respondent would remain incarcerated until at least July 13, 2013, a period in excess of three years from the time of the termination hearing. Unlike the appellant in *In re Mason*, 486 Mich 142, 161; 782 NW2d 747 (2010), respondent did not provide a plan for her child's care and custody during the period of her incarceration. The trial court did not terminate respondent's parental rights under MCL 712A.19b(3)(h) based solely on the fact that respondent was incarcerated for a period exceeding two years. Rather, the trial court relied both on the fact of respondent's incarceration and her lack of planning for the child during the period of her incarceration as support for its decision. The trial court did not clearly err in finding that petitioner established by clear and convincing evidence that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(h).

Respondent correctly notes that she complied with some aspects of her service plan prior to her incarceration and that she sought to become involved in services while incarcerated. Nevertheless, the undisputed evidence showed that prior to her incarceration, she exposed the child to persons who had criminal backgrounds and used illegal substances, and that she herself used illegal substances in the child's presence. Moreover, respondent indicated that after she was paroled from prison, she planned to take the child and live with her father, who is a registered sex offender, and to seek unemployment benefits. This evidence showed that respondent did not have an appropriate plan for the child's proper care and custody after her incarceration ended. This evidence supported the trial court's termination of respondent's parental rights under MCL 712A.19b(3)(g) and (j).

The undisputed evidence showed that the child was getting along well in his foster placement, was attending school regularly and making improvements there, and was receiving counseling for his emotional difficulties. The child did not indicate that he missed his mother, and in fact expressed a wish to remain in his foster placement. This evidence, viewed in conjunction with the undisputed evidence of respondent's incarceration and lack of a plan for the child, supported the trial court's finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering